



General Assembly

January Session, 2013

Raised Bill No. 6549

LCO No. 3666



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

***AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN
INSURANCE POLICY CLAIMS ARISING FROM A CATASTROPHIC
EVENT.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 38a-9 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) Notwithstanding the provisions of section 4-8, there shall be a
4 Division of Consumer Affairs within the Insurance Department, which
5 division shall act on the Insurance Commissioner's behalf and at his
6 direction in order to carry out his responsibilities under this title with
7 respect to such matters. The division shall receive and review
8 complaints from residents of this state concerning their insurance
9 problems, including claims disputes, and serve as a mediator in such
10 disputes in order to assist the commissioner in determining whether
11 statutory requirements and contractual obligations within the
12 commissioner's jurisdiction have been fulfilled. There shall be a
13 director of said division, who shall be provided with sufficient staff.
14 The division shall serve to coordinate all appropriate facilities in the

15 department in addressing such complaints, and conduct any outreach
16 programs deemed necessary to properly inform and educate the public
17 on insurance matters. The director shall submit quarterly reports to the
18 commissioner [, which] that shall state the number of complaints
19 received by the division in such calendar quarter, the Connecticut
20 premium volume of the appropriate line of each insurance company
21 against which a complaint has been filed, the types of complaints
22 received, and the number of such complaints which have been
23 resolved. Such reports shall be published every six months and copies
24 shall be made available to any interested resident of this state upon
25 request. The commissioner shall report, in accordance with section 11-
26 4a, to the joint standing committee of the General Assembly having
27 cognizance of matters relating to insurance on or before January
28 fifteenth annually, concerning the findings of such reports and
29 suggestions for legislative initiatives to address recurring problems.

30 (b) (1) The Division of Consumer Affairs shall provide an
31 independent arbitration procedure for the settlement of disputes
32 between claimants and insurance companies concerning automobile
33 physical damage and automobile property damage liability claims in
34 which liability and coverage are not in dispute. Such procedure shall
35 apply only to disputes involving private passenger motor vehicles as
36 defined in subsection (e) of section 38a-363. Any company licensed to
37 write private passenger automobile insurance, including collision,
38 comprehensive and theft, in this state shall participate in the
39 arbitration procedure. The commissioner shall appoint an
40 administrator for such procedure. Only those disputes in which
41 attempts at mediation by the Division of Consumer Affairs have failed
42 shall be accepted as arbitrable. The referral of the complaint to
43 arbitration shall be made by the Insurance Department examiner who
44 investigated the complaint. Each party to the dispute shall pay a filing
45 fee of twenty dollars. The insurance company shall pay the [consumer]
46 claimant the undisputed amount of the claim upon written notification
47 from the department that the complaint has been referred to

48 arbitration. Such payment shall not affect any right of the [consumer]
49 claimant to pursue the disputed amount of the claim.

50 (2) The commissioner shall prepare a list of at least ten persons, who
51 have not been employed by the department or an insurance company
52 during the preceding twelve months, to serve as arbitrators in the
53 settlement of such disputes. The arbitrators shall be members of any
54 dispute resolution organization approved by the commissioner. One
55 arbitrator shall be appointed to hear and decide each complaint.
56 Appointment shall be based solely on the order of the list. If an
57 arbitrator is unable to serve on a given day, or if either party objects to
58 the arbitrator, then the next arbitrator on the list shall be selected. The
59 department shall schedule arbitration hearings as often, and in such
60 locations, as it deems necessary. Parties to the dispute shall be
61 provided written notice of the hearing at least ten days prior to the
62 hearing date. The commissioner may issue subpoenas on behalf of the
63 arbitrator to compel the attendance of witnesses and the production of
64 documents, papers and records relevant to the dispute. Decisions shall
65 be made on the basis of the evidence presented at the arbitration
66 hearing. Where the arbitrator believes that technical expertise is
67 necessary to decide a case, such arbitrator may consult with an
68 independent expert recommended by the commissioner. The arbitrator
69 and any independent technical expert shall be paid by the department
70 on a per dispute basis as established by the commissioner. The
71 arbitrator, as expeditiously as possible but not later than fifteen days
72 after the arbitration hearing, shall render a written decision based on
73 the information gathered and disclose the findings and the reasons to
74 the parties involved. The arbitrator shall award filing fees to the
75 prevailing party. If the decision favors the [consumer] claimant, the
76 decision shall provide specific and appropriate remedies including
77 interest at the rate of fifteen per cent per year on the arbitration award
78 concerning the disputed amount of the claim, retroactive to the date of
79 payment for the undisputed amount of the claim. The decision may
80 include costs for loss of use and storage of the motor vehicle and shall

81 specify a date for performance and completion of all awarded
82 remedies. Notwithstanding any provision of the general statutes or
83 any regulation, the Insurance Department shall not amend, reverse,
84 rescind, or revoke any decision or action of any arbitrator. The
85 department shall contact the [consumer] claimant not later than ten
86 business days after the date for performance, to determine whether
87 performance has occurred. Either party may make application to the
88 superior court for the judicial district in which one of the parties
89 resides or, when the court is not in session, any judge thereof for an
90 order confirming, vacating, modifying or correcting any award, in
91 accordance with the provisions of sections 52-417, 52-418, 52-419 and
92 52-420. If it is determined by the court that either party's position after
93 review has been improved by at least ten per cent over that party's
94 position after arbitration, the court may grant to that party its costs and
95 reasonable attorney's fees. No evidence, testimony, findings, or
96 decision from the department arbitration procedure shall be
97 admissible in any civil proceeding, except judicial review of the
98 arbitrator's decision as contemplated by this subsection.

99 (3) The department shall maintain records of each dispute,
100 including names of parties to the arbitration, the decision of the
101 arbitrator, compliance, the appeal, if any, and the decision of the court.
102 The department shall annually compile such statistics and send a copy
103 to the committee of the General Assembly having cognizance of
104 matters relating to insurance. The report shall be considered a public
105 document.

106 (c) (1) The Division of Consumer Affairs shall establish a program
107 for the nonadversarial mediation of disputes between claimants and
108 insurance companies for the settlement of claims arising under the
109 claimant's (A) personal risk insurance policy, as defined in section 38a-
110 663, other than a private passenger nonfleet automobile insurance
111 policy, (B) condominium association master policy under section 47-83,
112 or (C) unit owners' association property insurance policy under section
113 47-255, that involve loss due to a catastrophic event for which the

114 Governor has declared a state of emergency. Any company licensed to
115 write the lines of insurance set forth in subparagraphs (A) to (C),
116 inclusive, of this subdivision, shall participate in the mediation
117 program. For purposes of this subsection, "claim" means any dispute
118 arising from such catastrophic event, in which the difference between
119 the position of the parties is five hundred dollars or more,
120 notwithstanding any applicable deductible, or for which the insurer
121 has denied payment for a loss arising from such event, except that the
122 parties may agree to mediate a dispute involving a lesser amount. A
123 claim does not include a dispute with respect to which the insurer has
124 reported allegations of fraud, based on an investigation by the
125 insurer's special investigative unit, to the Insurance Department.

126 (2) The commissioner may designate an entity or individual as the
127 commissioner's designee to carry out the responsibilities of this
128 subsection. The insurer shall bear all costs of conducting a mediation
129 proceeding, including, but not limited to, an administrative fee
130 established by the commissioner in an amount not to exceed seven
131 hundred fifty dollars, for the Insurance Department's or the
132 commissioner's designee's administration of such proceeding, and the
133 mediator's fee. The insurer shall pay such fees, which shall be
134 nonrefundable, to the Insurance Department, except that if, as a result
135 of a mediation proceeding, it is determined that the only coverage
136 applicable is provided under the National Flood Insurance Program,
137 the administrative fee paid by the insurer shall be refunded to the
138 insurer or credited to the insurer's account with the Insurance
139 Department or with said department's administrative designee of the
140 mediation program.

141 (3) The commissioner shall prepare a list of at least ten persons, who
142 have not been employed by the department or an insurance company
143 during the preceding twelve months, to serve as mediators in the
144 settlement of such disputes. The mediators shall be members of any
145 dispute resolution organization approved by the commissioner. One
146 mediator shall be appointed to hear and decide each complaint.

147 Appointment shall be based solely on the order of the list. If a
148 mediator is unable to serve on a given day, or if either party objects to
149 the mediator, then the next mediator on the list shall be selected. The
150 department shall schedule mediation hearings as often, and in such
151 locations, as it deems necessary. Parties to the dispute shall be
152 provided written notice of the hearing at least ten days prior to the
153 hearing date. The commissioner may issue subpoenas on behalf of the
154 mediator to compel the attendance of witnesses and the production of
155 documents, papers and records relevant to the dispute. Decisions shall
156 be made on the basis of the evidence presented at the mediation
157 hearing. Where the mediator believes that technical expertise is
158 necessary to decide a case, such mediator may consult with an
159 independent expert recommended by the commissioner. The mediator
160 and any independent technical expert shall be paid by the department
161 on a per dispute basis as established by the commissioner. The
162 mediator, as expeditiously as possible but not later than fifteen days
163 after the mediation hearing, shall render a written decision based on
164 the information gathered and disclose the findings and the reasons to
165 the parties involved. If the decision favors the claimant, the decision
166 shall provide specific and appropriate remedies including interest at
167 the rate of fifteen per cent per year on the mediation award concerning
168 the disputed amount of the claim, retroactive to the date of payment
169 for the undisputed amount of the claim or the date of the denial of the
170 claim. The decision shall specify a date for performance and
171 completion of all awarded remedies. The department shall contact the
172 claimant not later than ten business days after the date for
173 performance, to determine whether performance has occurred.

174 (4) If an insured chooses not to participate in the mediation program
175 or if the parties are unsuccessful at resolving the claim through a
176 mediation proceeding, the insured may proceed under the appraisal
177 process set forth in the insured's insurance policy or by any other
178 dispute resolution procedure available pursuant to state law, or bring
179 an action in the superior court of the judicial district in which the loss

180 occurred.

181 ~~[(c)]~~ (d) Notwithstanding the provisions of section 4-8, there shall be
 182 a Division of Rate Review within the Insurance Department, which
 183 division shall act on the commissioner's behalf and at the
 184 commissioner's direction in order to carry out the commissioner's
 185 responsibilities under this title with respect to such matters. Subject to
 186 the provisions of sections 38a-663 to 38a-696, inclusive, the division
 187 shall assist the commissioner in reviewing rates and supplementary
 188 rate information filed with the department for compliance with
 189 statutory requirements and standards. The division's staff shall include
 190 rating examiners with sufficient actuarial expertise. Upon the request
 191 of the commissioner, the division shall review rates and
 192 supplementary rate information, and any suspected violation of the
 193 statutory requirements and standards of sections 38a-663 to 38a-696,
 194 inclusive, found pursuant to such review shall be referred to the
 195 commissioner for appropriate action. The division may assist the
 196 commissioner in formalizing the commissioner's findings regarding
 197 such actions. The commissioner shall report, in accordance with
 198 section 11-4a, to the joint standing committee of the General Assembly
 199 having cognizance of matters relating to insurance on or before
 200 January fifteenth annually, concerning (1) the number and type of
 201 reviews conducted by the division in the prior calendar year, and (2)
 202 the percentage of increase or decrease in rates reviewed by the division
 203 during the preceding calendar year, by line and subline of insurance.

204 ~~[(d)]~~ (e) The directors and staff of both the Division of Consumer
 205 Affairs and the Division of Rate Review shall be appointed by the
 206 commissioner under the provisions of chapter 67.

207 Sec. 2. Section 38a-10 of the general statutes is repealed and the
 208 following is substituted in lieu thereof (*Effective October 1, 2013*):

209 (a) The Insurance Commissioner shall adopt regulations, in
 210 accordance with the provisions of chapter 54, to carry out the purposes

211 of subsection (b) of section 38a-9, as amended by this act.

212 (b) The Insurance Commissioner shall adopt regulations, in
213 accordance with the provisions of chapter 54, to carry out the purposes
214 of subsection (c) of section 38a-9, as amended by this act. Such
215 regulations shall include, but not be limited to: (A) The form and
216 manner of notification by the insurer to an insured of the right to
217 mediation; (B) the forms and procedures for an insured or insurer to
218 request a mediation proceeding; (C) the requirements for an insurer's
219 participation at the mediation hearing; (D) the procedures for
220 scheduling a mediation hearing; (E) the conduct of a mediation
221 hearing; and (F) post-mediation reporting requirements, including the
222 effect of any settlement agreement in the release of claims.

223 (c) Copies of the regulations shall be provided to any person upon
224 request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	38a-9
Sec. 2	October 1, 2013	38a-10

Section 1	October 1, 2013	38a-9
Sec. 2	October 1, 2013	38a-10

Statement of Purpose:

To establish a mediation program for disputes between claimants and insurance companies for the settlement of claims, for certain insurance policies, that arise from a loss due to a catastrophic event for which the Governor has declared a state of emergency.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]